

Alternate Power Source (APS) is taking this opportunity to comment on the five restructuring proposals submitted to the Department (MDPU), pursuant to para. 2 Article III, NOI/Rulemaking, in the Department's Order Commencing Notice of Inquiry/Rulemaking and Setting A Procedural Schedule dated March 15, 1996. We are also enclosing fifteen copies of the comments contained herein.

As a broker that has represented the customer side ever since restructuring was initiated by the department on February 10, 1995 in MDPU 95-30, pursuant to "Notice of Inquiry and Order Seeking Comments on Electric Industry Restructuring", APS has had an ongoing interest in the evolution and ultimate resolution of how best to implement a fully competitive market for energy sales and services. While pleased that a number of the respondents attempted to address, and have understood, that a competitive market is inevitable, they continue to put too many conditions on its outcome. Of all the approaches, APS believes that the DOER's is the most reasoned, sensitive to and mindful of the needs of the consumer. APS is also cognizant of the DOER Commentary on Restructuring Proposals issued on June 19, 1995 wherein it stated that "A comparative analysis of these utilities' proposals indicates that this differing emphasis and detail mask what is in fact a remarkable similarity." This is still the case. However, within those similarities there are a range of attitudes which will ultimately bear heavily on all participants. While Mass. Electric and Eastern Edison at least accept the notion that a restructured industry is in the best interest of all and should be attained by the January 1, 1998 target date of the Department, the BECO filing does not coincide with Department's timetable and will result in a delay for full implementation beyond the January 1, 1998 date. BECO's timetable proposes initiating retail choice in mid 1998 with full implementation in the year 2000. (Fig. 4 - DPU 96-23) This does not reflect the Department's schedule. The WMECO proposal is at odds with the department's idea that a fully competitive market is necessary to serve the broader interest of the public. To quote WMECO: "At present there are too few of the critically needed building blocks in place for a smooth transition to an effective retail market in which the traditional franchise of companies such as WMECO is replaced with multiple marketers." (B.M. Fox testimony - p. 3). As a matter of fact, WMECO states that its "proposed restructuring plan ...is an enhanced version of its "Path to a Competitive Future," which was submitted in DPU 95-30 back in March 1995. (B.M. Fox testimony - p. 3). We will touch upon the WMECO response in more detail, but suffice it to say, it is not responsive whatsoever to the Department's Order to Commence Investigation and set forth principles for a restructured industry. It appears that voluntarism, as the driving force behind the Department's efforts, may fall short in this case.

As the basis for our review, comments, and analysis of the five proposals, we believe that the DOER Proposal should serve as the model against which the other four proposals are measured. It draws as clear a picture as is necessary to restructure, and proposes a pathway and time-frame which can be accomplished within the Department's restructuring goals without undue hardship being placed upon the consumer and other stakeholders. Accordingly, we ascribe to the DOER "Plan to Deregulate Elements of the Electric Industry in Massachusetts," also known as "Power Choice." Before proceeding with our comments with regard to the specific industry restructuring plans of each company, there is a common thread to their work which we believe will hinder the Department's efforts in achieving a "target date for all electric companies to implement retail choice no later than January 1, 1998" (p. 8 - DPU 96-100 General Proceeding - NOI/Rulemaking issued 3/15/96). The inevitability of restructuring resulting in a competitive marketplace appears to be a given and accepted by all parties. It is evident, however, the utilities while advocating an open market doctrine are attempting to delay or postpone the impact for several years. In the interest of economic efficiency, the MDPU must not allow this to happen.

The remaining key issues to be resolved center on questions of stranded investment. Given a reasonable amortization period (APS proposes 10 years) and some customer/shareholder cost sharing, most reasonable parties would focus on a final determinant of stranded investment to be in the \$0.01 to \$0.02/kwhr range.

APS urges the MDPU to not allow the discussions regarding stranded costs to appreciably delay the economic savings that will immediately accrue from an open and competitive marketplace. To allow unnecessary delay would be to advocate economic waste in the highest order - something Massachusetts can ill afford. Should stranded cost discussions potentially delay any proposed pilot programs or transitions in early 1997, APS suggests the MDPU allow the process to begin by approving provisional billings by the utilities at the rate of \$0.01/kwhr for stranded investment, subject to future retroactive adjustment to customer billings once the regulatory review process is completed and a final determination of cost is made. Any added or returned costs could be recovered or returned via a surcharge or credit similar to that used in past fuel clause filings.

In addition, APS feels the following areas which the MDPU has requested respondent focus on, will ultimately prove to be a hindrance to accomplishing a fully competitive marketplace unless addressed properly:

- (1) market structure
- (2) market power
- (3) transmission
- (4) stranded cost
- (5) transition

With respect to:

- (1) Market Structure

Each of the participants talks about functional unbundling or restructuring as a matter of choice and as

reflective of the Department's desires (p. 16 - MDPU - 95-30 Investigation).

While we are mindful of the Department's desire to keep an ongoing dialogue in order not to delay the introduction of competition, we believe that functional separation of the industry will do just that, keep out competition. The very reason which the Department cites for its choice should have led to an opposite conclusion, that is, choosing divestiture. In the Department's words, "the functional separation...is a necessary first step to address market power issues and limit a Company's ability to provide itself an undue advantage in buying or selling services in competitive markets" (p. 19 - DPU 96-100). Under functional separation, these market powers which exist today will continue to exist. The Department has stated that "New England Electric System and Northeast Utilities operate substantive intrastate electricity transmission lines on north-south and east-west axes" (p. 5 - DPU 95-30). Furthermore, Eastern Edison has stated that "the big three control over 70% of the Massachusetts market and Northeast controls over 68% of uncommitted generation capacity (p. 8 - Testimony). This substantial market power will remain in the hands of the existing few which will stifle the Department's goal to introduce a competitive power market. It is a red light (STOP sign). It does not purport to the Department's stated goal for the Future Electricity Industry (p.i. - DPU 95-30) or with the Department's statement that "long-term cost reductions will be achieved most effectively by increasing competition in the generation industry...thereby allowing market price to play the principle role in organizing electricity supply for all customers (p. 2 - DPU 95-30). The Department has rightly stated that "the cost of electricity in Massachusetts is higher than the Department believes can be achieved...APS believes that...allowing market forces to operate...are the most effective means of...lowering the costs...." (p. 13- DPU 95-30); and the concentration and continuation of market power will not be diminished through functional re-organization. It must be remembered that so long as one entity controls all the parts, it is in his/her best interest to do whatever is necessary to maximize total profits. The DOER has elegantly and convincingly pointed out those same points in its "Power Choice" Plan (p 23ff). We join with the DOER on this issue. We ask you to reconsider your position and role in favor of actual divestiture. This would level the playing field for all interests, particularly the consumer.

(2) Market Power

Market power and market structure are mutually inclusive of each other. It is the concentration of market power that determines the market structure. The greater the concentration of market power the more rigid the structure and the less likely a competitive market will evolve. APS has talked about market power in (1) above but it is noteworthy to point out that two of the three major utilities never mention market power while NEES pushes it to the side by stating that transmission access and a standard offer contract are sufficient checks to market power. However, even NEES admits that "NU has 35% of all regional capacity" (p. 119 - NEES Testimony). Only Eastern Edison admits that there is an undue concentration of market power, undue domination by a few suppliers, and that their market powers exist even beyond the boundaries of Massachusetts.

(3) Transmission

Each of the utility participants favors the continuation of NEPOOL in one shape or another. We believe that it is not possible for NEPOOL to be an independent system operator that is totally independent of those which helped create it. Most independent energy suppliers are uncomfortable with an organization that has, and is believed will continue to be, dominated by those few who control the market in New England. And, so long as true independence is not achieved, a time consuming, costly policing function will be required to ensure self dealing and pressure tactics do not occur. The fact that NEPOOL plus membership is a requirement in some plans simply confirms our suspicions about "even handedness." None of the four utility plans has made a convincing case to maintain NEPOOL under its existing umbrella. There is no need to remind outsiders that the obligations and loyalties of NEPOOL management run deep, and so do their roots. The DOER "Power Choice" Plan is a reasoned approach and allays our deep concerns about the fairness of this organization toward independent markets. Furthermore, APS supports the leasing of all transmission facilities to an independent entity. This will alleviate fears of vertical market power, particularly when NEES and Northeast control most of the wires into and out of New England.

(4) Stranded Cost

We support the ten year write off position but are concerned with the substantial access charges of the utilities. Those charges will continue to leave the state as a high cost electricity consumer, a position in from which the Department has specifically distanced itself. (In our written response to the Department on March 31, 1995 under its NOI on Electric Industry Restructuring in Docket DPU 95-30, we proposed to "split the write off between customer and shareholder. In fairness to all, APS believes that there will be some impact but the burden should be shared." The New Hampshire Public Utilities Commission has also taken this position in its Final Guidelines on the Retail Competition Pilot Program. Furthermore, Natural Gas Industry Restructuring under FERC Order 636 used the same principle in allocating stranded costs between customers and shareholders. The consumer has been overpaying for a number of years due to questionable investment decisions and operational inefficiencies. If a true up were to be made, one could find that the "add ons" or access charges made to date would more than compensate the electric franchise holder.

(5) Transition

Both BECO and the DOER have suggested pilot programs as a means to transition into full retail access. Our comments on the BECO Real Time Pricing pilot is as follows:

- A true retail access pilot requires competition!! The pilot does not introduce real competition as proposed with full retail access. The plan holds the customer captive to BECO only.
- The plan reflects hourly pricing as predicted by BECO one day in advance, many customers APS deals with do not have the ability to load shed to a degree necessary to realize any substantial savings from this pilot. We believe this does not provide customer choice or savings.

The DOER transition pilot proposes that 10% of the customer base be allowed retail access on January 1, 1997. APS fully supports this proposal and would suggest that the percentage be increased to 25% or possibly phase in the customer base from 0 to 100 percent over the year 1997.

Finally, some comments pertaining to each of the utility restructuring plans that are not included in the above 5 items:

NEES

Overall we read of their willingness to go "fast track" but are concerned with the condition it places to achieve its desired goals. Its standard offer with fixed or capped prices sends the wrong signal. Prices will not necessarily mirror the market nor will it be an inducement to shop elsewhere. Its cost allocation argument between generation and transmission on P. 18 of its testimony appears to be a form of cross subsidization. This is the kind of shifting that the Department should be very wary of.

BECO

Their phase in is of concern. Its simulation of an hourly market price does not necessarily reflect a free market price. Only through a broad base of buyers and sellers competing and/or negotiating with or against each other can a market price be determined.

Their full phase in doesn't occur until after the Department's January 1, 1998 target date.

They do not fully unbundle prices until mid 1998 and will not allow full phasing in of retail choice until the year 2000 (end of phase 2).

- Their cost allocation treatment in transmission ratemaking leaves too much room for cross-subsidization.

WMECO

As we've stated above, they are not responsive to the Department's order to provide a restructuring plan in which "the target date for all electric companies to implement retail choice is set at January 1, 1998." As a matter of fact, their plan is a modified "rate case filing" over a five year period (starting date: unknown). Our particular comments are:

It continues to insist on regulation rather than deregulation (Fox - p. 23).

It argues to keep things as they are (Fox - p. 25).

It talks in mystical terms about "critically needed building blocks" and "testing customer choice" (Fox - p. 3).

- It insists that change will occur through listening and trying to accommodate (Fox - p. 1). while

It insists that its plan is a version of that submitted in the first round.

It talks about rate design (Fox - p. 3) and,

It pointedly urges the Department to recognize that industry restructuring is not a "quick fix" for relatively high electricity prices (Fox - p. 8) and,

It won't go forward unless the myriad of issues are resolved first (Fox - p. 25).

We can go on but we believe that we've made our point. The Department's stated goal encompassed in DPU 95-30, issued on 8/16/95, is irrevocably at odds with the WMECO position. It states that: "The Department finds that the interests of ratepayers would best be served by an expedient and orderly transition ... in order to bring to ratepayers the benefits of competition as quickly as possible" (p. ii). There is clearly no nexus between the Department's intent and WMECO's desires. And there is no need to remind the Department that, "... it is important that movement toward a new industry structure proceed without undue delay. Therefore, the Department is unwilling to allow negotiations to continue indefinitely." (p. 49 - MDPU 95-30, 8/16/95) is an edict which must be acted upon.

Eastern Edison Company

Overall, they have gone more than halfway in proposing this plan. However, we believe that:

Fossil and hydro units should be included in net standard cost evaluation.

Comments of Alternate Power Source, Inc.
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Although ideal, it is not feasible to insist that all of New England open up before being required to open its system to retail access.

- Universal service/standard offer rates should not be priced at current levels but at spot market rates.

DOER

APS favors their proposal and strongly recommend that its plan serve as the model for which further restructuring efforts are undertaken. It encompasses all the Department's goals and aims in an expeditious and equitable manner for all of the stakeholders in the process.